



**Brent Mayr**  
Managing Shareholder  
Attorney and Counselor at Law

Board Certified – Criminal Law  
Texas Board of Legal Specialization

5300 Memorial Dr., Suite 750  
Houston, Texas 77007  
Ph: 713.808.9613  
Fax: 713.808.9991  
bmayr@mayr-law.com  
[www.mayr-law.com](http://www.mayr-law.com)

December 17, 2020

Deana Williamson, Clerk  
Court of Criminal Appeals of Texas  
via e-file

FILED  
COURT OF CRIMINAL APPEALS  
12/18/2020  
DEANA WILLIAMSON, CLERK

Re: *Ex parte Joseph Gomez*  
Case Nos. PD-0724-20 and PD-0725-20  
Third Letter of Supplemental Authority

Dear Ms. Williamson:

During oral argument yesterday, I referenced a number of statutes and cases not previously mentioned or discussed in our brief. As I mentioned to the Court, I would provide a letter with this supplemental authority and, pursuant to Rule 75.3, Texas Rules of Appellate Procedure, submit the following.

To demonstrate the distinction between a “bond” and “bail amount,” I cited the Court to multiple statutes that discuss the “amount of *bail*” as opposed to the “amount of the *bond*.” Those and others are:

- TEX. CODE CRIM. PROC. art. 17.15 (West 2020)(laying out the rules for setting the “amount of bail”)
- TEX. CODE CRIM. PROC. art. 17.091 (West 2020)(requiring notice and an opportunity for a hearing when the judge or magistrate intends to reduce the “amount of bail”)
- TEX. CODE CRIM. PROC. art. 17.151 (West 2020)(requiring the “amount of bail” to be reduced when a defendant is detained beyond certain time frames)
- TEX. CODE CRIM. PROC. art. 17.21 (West 2020)(allowing for the court before which the felony prosecution is pending to “fix the amount of bail”)
- TEX. CODE CRIM. PROC. art. 17.33 (West 2020)(permitting an accused to request a magistrate to review evidence in determining the “amount of bail”)

The point of referring to these statutes is to demonstrate that, if Section 3 of Article 17.09 was meant to address the insufficiency of the amount of *bail* required to be given by a defendant to secure their release, the statute could have, like these several other statutes, used that language. Instead, it refers to the *bond* being defective, excessive or insufficient in amount. *See* TEX. CODE CRIM. PROC. art. 17.09 § 3 (West 2020).

This leads to the next supplemental authority discussed during oral arguments. During a line of questioning with Judge Newell, when asked about a situation where the bond would be “insufficient in amount,” I cited the Court to *In re Tharp*, 351 S.W.3d 598 (Tex. App.—Austin 2011, no pet.). In that case, the court held that the trial court had no discretion to permit a defendant to be released by requiring a cash deposit only equal to ten percent of the bond amount it had set. *Id.* at 600. Although I referred to it as a “split bond,” as the opinion discusses, the more appropriate term for this is a “differential bond.” *See id.* That would be one example where the bond would be “insufficient in amount” and, under Article 17.09, a defendant would be required to give a second bond to secure their release.

Although it was discussed that it would be the rare case for a person to give an insufficient bond *and* be released from custody, a more likely scenario could arise where a person gives a bond that is “insufficient in amount” and *not* be released from custody. By way of example, a magistrate could set a \$20,000 bail amount, the defendant gives only a \$5,000 cash bond, and is *not* released from custody (for obvious reasons). Even though Section 2 of Article 17.09 says that a defendant shall not be required to give another bond, this would be another situation where Section 3 would apply as the \$5,000 cash bond would be “insufficient in amount” to secure their release; the defendant would be required to give another bond — whether it was an additional \$15,000 cash bail bond or \$15,000 surety bail bond — before they could be released from custody.

Judge Slaughter, during her questioning, brought up Article 16.16 and asked about its applicability to the instant issue. Rather than set out the cases and entire reasoning for why that statute does not apply in this case, I would direct this Court to the motion for reconsideration that I, along with co-counsel, submitted to this Court in another case, *State of Texas v. Timothy Singleton*, AP-77,097 (filed April 20, 2020).

Finally, during argument, I discussed the heightened protections that a person who is released from custody has before their bond can be revoked, referencing, *inter alia* Texas Rule of Evidence 101(e)(3)(C). I would also direct the Court to Article 17.40, Texas Code of Criminal Procedure which requires a trial court to find by a preponderance of evidence that a defendant violated a condition of bond before their bond can be revoked. TEX. CODE. CRIM. PROC. art. 17.40 (West 2020). This is just one

more example of the law requiring more than just a trial court *sua sponte* revoking the bond because it simply believes the bail amount is “insufficient.”

In summary, the trial court here — and any other trial court in this State — should not be permitted to revoke a defendant’s bond and require that defendant to give a new bond without good and sufficient cause or, as Judge Yeary put it, “on a whim.” That is consistent with the case law and the statutes. Because there was no good and sufficient cause in Mr. Gomez’s case to revoke his \$40,000 bonds, the Court of Appeals correctly concluded that the trial court abused its discretion and we respectfully request this Court to affirm that decision.

We appreciate your attention to the matter.

Respectfully Submitted,

/s/ T. Brent Mayr  
T. Brent Mayr  
Attorney for Applicant, Joseph Gomez

cc: Clint Morgan, attorney for the State  
& State Prosecuting Attorney Stacey Soule  
via service through counsel’s electronic filing manager on December 17, 2020

### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Thomas Mayr  
Bar No. 24037052  
bmayr@mayr-law.com  
Envelope ID: 49062487  
Status as of 12/18/2020 9:26 AM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Stacey Soule	24031632	information@spa.texas.gov	12/17/2020 3:58:37 PM	SENT
Clinton Morgan	24071454	morgan_clinton@dao.hctx.net	12/17/2020 3:58:37 PM	SENT